tion may, at the expiration of such period, make successive extensions for additional periods of one year each. The place in which or the person with which the child has been placed under this section shall submit a report at the end of the year of placement, making recommendations and giving such supporting data as is appropriate. The court on its own motion may at the conclusion of any period of placement hold a hearing concerning the need for continuing placement.

(c) Successive extensions may be granted, but no placement may be made or continued under this section beyond the child's eighteenth birthday if male, or twentieth birthday if female, without his or her consent and in no event past his or her twenty-first birthday.

Appellant was in fact *placed* in the Training School rather than committed [Printed Appendix, p. 35] and hence faced incarceration until his eighteenth birthday, that is, for six years. In actual practice, the placement procedure rather than the commitment procedure is customarily employed by the New York Family Court precisely because it permits significantly longer confinement. Thus, a recent study by the Community Service Society of New York reports that ninety-five per cent of the juveniles in the New York Training Schools are there pursuant to a placement order rather than a commitment order. *Out of Sight—Out of Mind, A Report of the New York State Training Schools in the Downstate Complex*, 1967, p. 6.*

* While the court has the option either to place or to commit where confinement is to the State Training Schools, a commitment order is necessary where confinement is to be made at the Elmira Reformatory. Commitment to Elmira (which is under the auspices

(2)

In a strained effort to withhold this case from the logic and language of *Gault*, appellee contends that *Gault* made only one "statement, as far as we can find, that treats a juvenile delinquency proceeding as though it were criminal in nature" and that the single statement was confined to the juvenile's privilege against self-incrimination. [Appellee's Brief, p. 11.] While appellant has not argued that juvenile and adult proceedings need be indistinguishable, appellee's reading of *Gault* distorts the clear language and import of that opinion. To cite but two, among many, expressions of this Court's realistic assessment of the work of the juvenile court and the penal consequences of an adjudication, we quote the following:

> "Ultimately, however, we confront the reality of that portion of the juvenile court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes 'a building with white-washed walls, regimented routine and institutional hours. . . .' [citations

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of the New York Department of Correction rather than the Department of Social Service) is authorized only where the juvenile committed a class A or B felony as defined by the New York Penal Law when he was over the age of fifteen. FAM. CT. ACT, §758(b).

omitted] Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness [citation omitted] to rape and homicide." *In Re Gault*, 387 U.S. at 27.

"The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case." *Id.* at 29.

(3)

Appellee contends that overruling the New York statute with regard to the standard of proof would "almost automatically" require such further criminal-court-type innovations as jury trials in juvenile proceedings. [Appellee's Brief, p. 31.] Moreover, he misleadingly frames the questions in this case to be whether *any* involuntary confinement requires *all* the protections available to an adult criminal defendant and whether, in any event, *all* such protections must apply to delinquency proceedings. [Appellee's Brief, p. 2.] The question actually presented is patently the much narrower one of whether the highest standard of proof, and that alone, must be accorded to juveniles facing incarceration for delinquency.

It may be that jury trials or other procedures will be required in juvenile proceedings. But if so, it will not be because of a decision in the instant case. To hold that elemental fairness requires proof to the highest degree of certainty is not, as appellee suggests, to hold that a juvenile proceeding must resemble a criminal trial in every respect, or indeed, in any other respect.

In the same vein, appellee concedes the failure of the juvenile court in New York to meet its commendable goals [Appellee's Brief, pp. 16-17] but argues that despite its failures, the juvenile court should not merge with the criminal courts. He urges that the juvenile court remain susceptible to further unspecified future reforms. Appellant quite agrees that the court should be left open to improvement. Appellant contends only that notwithstanding the uncertain prospect of substantial reform in the New York juvenile court and facilities, the Constitution requires that the risk of error be reduced in determining which children must be subjected to the judicial process, by requiring that their guilt be proved beyond a reasonable doubt.

(4)

Appellee unnecessarily argues that proof beyond a reasonable doubt is not required in every proceeding which may lead to confinement. [Appellee's Brief, pp. 33-34.] Thus he cites several types of adjudications for hospitalization or other commitment of the insane, alcoholics, sexual psychopaths, narcotic addicts and the like. It is readily apparent that the commitment of such individuals is predicated upon an altogether different basis than the confinement of a juvenile delinquent. In the types of cases cited by appellee, the adjudication is predicated essentially upon medical evidence relating to a mental or physical condition. An appropriate standard of proof preceding confinement of a juvenile for a law violation can easily be evaluated in its own context, without reference to other adjudications leading to confinement.

(5)

Appellee insists that the two-stage procedure for juvenile cases in New York justifies a lower standard of proof at the fact-finding hearing. [Appellee's Brief, p. 35.] He argues that because the need for confinement must be factually adduced at the dispositional hearing, less certainty is required at the hearing at which guilt or innocence is established. The two-stage proceeding, however, has direct parallels in the criminal law in such matters, for example, as the sentencing of multiple offenders or of dangerous sexual offenders. In such cases, additional facts warranting the imposition of special sentences must, as in delinquency proceedings, be adduced at a separate sentencing hearing. The requirement of the second hearing, however, does not reduce the government's burden of proving guilt of the underlying law violation beyond a reasonable doubt. See *Specht* v. *Patterson*, 386 U.S. 605 (1967); *People* v. *Bailey*, 21 N.Y.2d 588 (1968).

CONCLUSION

WHEREFORE, for the foregoing reasons, appellant prays the judgment below be reversed.

Respectfully submitted,

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